

September 10, 2009

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RE: State of Delaware v. Michelle I. Thomas
Criminal Action No.: K08-11-0914 (Offensive Touching of
Law Enforcement Officer
K08-11-0915 (Disorderly Conduct)
Case No.: 0811003951

Decision On Motion to Suppress Arrest

Dear Mr. Stevenson and Mr. Garey:

Michelle I. Thomas ("Defendant") has been charged with Offensive Touching of a Law Enforcement Officer, in violation of 11 *Del. C.* §601(a)(1), and Disorderly Conduct, in violation of 11 *Del. C.* §1301(1)(b), resulting from an event that occurred at the Delaware State University ("Delaware State") in Kent County, Delaware. The Defendant is an employee of Delaware State and had accumulated a number of parking tickets at the university that she failed to pay. Therefore, her vehicle was placed on the university's tow list. It is Delaware State's policy that vehicles on the tow list will be towed if found parked on Delaware State property.

One day, the Defendant's vehicle was discovered parked in a Delaware State lot by a Delaware State law enforcement officer ("Officer"). The Officer obtained a tow truck to tow the vehicle. While the truck was getting ready to tow the Defendant's vehicle, the Defendant appeared and objected to the towing of her vehicle. The Defendant obtained the keys to her vehicle and insisted on entering it over the objection of the Officer. The Officer, then, physically blocked the Defendant from entering the vehicle for safety reasons as the tow truck was in the process of hoisting the vehicle. The

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Defendant got the door to her vehicle open. The Officer forced the door closed and forced the Defendant away from the vehicle while continually telling her that she must stay away from it. The Defendant pushed the Officer away and proceeded to the back of her vehicle, by the tow truck. The Defendant got in the way of the tow. Therefore, the tow truck had to stop loading the Defendant's vehicle, which was already hoisted part way off of the ground. All of this time, the Defendant was screaming at the Officer in protest of the towing of her vehicle. A number of students and faculty members appeared at the windows of their buildings to see what was happening.

Before trial, the Defendant made a motion to suppress her arrest as she contends that the Officer did not have a reasonable articulable suspicion that she had committed a crime or that she was about to commit a crime when she was first stopped from entering her vehicle.¹ Therefore, she was illegally detained and it was this illegal detention that resulted in the charges against her. The Defendant's contention is without merit.

A. Seizure

The first issue that must be addressed is whether the Defendant was in fact seized when the Officer prevented her from entering her vehicle as it was being hoisted for tow by the tow truck. Based on the particular facts of this case, the Court finds that the Defendant was not seized.

The Fourth Amendment to the United States Constitution² and Article I, § 6 of the Delaware Constitution³ protect citizens from unlawful searches and seizures. A Fourth Amendment seizure occurs when a defendant stops as "an act of submission to a show of authority by the police," because based on the circumstances, a reasonable person would believe that he was not free to leave. *Quarles v. State*, 696 A.2d 1334, 1337 (Del. 1997).

¹ Defendant actually refers to her motion as a Motion to Dismiss. However, it is actually a Motion to Suppress her arrest.

² The Fourth Amendment to the United States Constitution reads as follows: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV.

³ Article I, § 6 of the Delaware Constitution reads as follows: "Searches and seizures. The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and no warrant to search any place, or to seize any person or thing, shall issue without describing them as particularly as may be; nor then, unless there be probable cause supported by oath or affirmation." Del. Const. art. I, § 6.

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To determine whether a seizure has occurred under Article I, § 6 of the Delaware Constitution, the court must “focus on the police officer’s actions to determine when a reasonable person would have believed he or she was not free to ignore the police presence.” *Jones v. State*, 745 A.2d 856, 869 (Del. 1999).

“Not every encounter with [a police officer] is a seizure.” *Williams v. State*, 692 A.2d 210, 214 (Del. 2008). Two categories of citizen-police encounters have been recognized by the Delaware Supreme Court as seizures under the Fourth Amendment: (1) the Terry-stop, which requires an officer to have a reasonable and articulable suspicion that the suspect has committed or is about to commit a crime; and (2) a full-scale seizure, such as an arrest, which requires an officer to have probable cause to believe that the suspect has committed a crime. *State v. Gibbs*, 2004 WL 2191032, at *2 (Del. Super. Aug 2, 2004) (citing *Terry v. Ohio*, 392 U.S. 1 (1968); *Quarles*, 696 A.2d at 1337). Other encounters between citizens and police, where a reasonable person would believe he was free to terminate the encounter, do not qualify as seizures. *See id.*

In the case at hand, the Defendant initiated the encounter with the Officer by appearing in the parking lot to protest the towing of her vehicle. Based on the circumstances in this case, a reasonable person in the Defendant’s position would believe that she was free to ignore the police presence and leave the scene. Furthermore, there was no evidence presented to show that, based on the Officer’s actions, the Defendant remained in the parking lot as an act of submission to a show of authority by the Officer.

The Officer’s refusal to allow the Defendant to enter her vehicle is insufficient to qualify as a seizure. Although the Officer physically blocked the vehicle door to prevent the Defendant from getting into the vehicle, she did not restrain the Defendant. The Defendant was free to leave the scene at all times during her encounter with the Officer.

Although the Court finds that the Officer did not seize the Defendant, the Officer would have been justified in doing so. Under 21 *Del. C.* § 4191, it is unlawful to ride in a towed vehicle unless it is necessary in order to steer the towed vehicle. The Defendant was attempting to enter her vehicle as it was about to be towed, in violation of § 4191. Therefore, the Officer would have had the required reasonable and articulable suspicion to seize the Defendant as she was about to commit a crime.

B. Community Caretaker Doctrine

Assuming *arguendo* that the Defendant was seized when she was denied entry into her vehicle, the Court finds that the seizure was justified under the community

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caretaker doctrine. Under the Fourth Amendment of the United States Constitution and Article I, § 6 of the Delaware Constitution, a warrantless seizure is presumed unreasonable. However, the presumption may be rebutted if an exception to the warrant requirement applies. *Williams v. State*, 692 A.2d 210, 216 (Del. 2008) (citing *Mason v. State*, 534 A.2d 242, 248 (Del. 1987)).

Delaware recognizes the “community caretaker doctrine” as an exception to the warrant requirement. *Id.* at 218. The role of police officers “is not limited to merely the detection and prevention of criminal activity, but also encompasses a non-investigative, non-criminal role to ensure the safety and welfare of our citizens.” *Id.* As a “jack-of-all-emergencies,” police officers are expected to render assistance to individuals in physical danger. *Id.* at 216-17.

The Delaware Supreme Court adopted the following three-part test to ensure that a seizure under the community caretaker doctrine is reasonable:

First, if there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in apparent peril, distress or need of assistance, the police officer may stop and investigate for the purpose of assisting the person. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, the caretaking function is over and any further detention constitutes an unreasonable seizure unless the officer has a warrant, or some exception to the warrant requirement applies, such as a reasonable, articulable suspicion of criminal activity. *Id.* at 219.

The Defendant in this case was attempting to enter her vehicle as it was being hoisted by a tow truck, putting her in physical danger. Applying the three-part test set forth in *Williams*, the Court finds that any seizure of the Defendant by the Officer under the community caretaker doctrine was reasonable.

First, objective, specific and articulable facts existed that would lead an experienced officer to believe that the Defendant was in peril and need of assistance. Her attempt to enter the vehicle as it was being hoisted by a tow truck was dangerous and could have resulted in a fall or other injury. The Officer’s assistance, to prevent the Defendant from being harmed, was reasonable and necessary. Second, seeing that the Defendant was in need of assistance, the Officer, by blocking the door of the vehicle and ordering the Defendant to back away, mitigated the peril the Defendant created. In fact,

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because of the danger of injury, the Court finds it would have been reasonable for the Officer to physically restrain the Defendant to keep her from entering the vehicle. Third, once the Officer stopped the Defendant from entering the vehicle, there was no further detention of the Defendant.

For the foregoing reasons, Defendant's Motion to Suppress her arrest is **DENIED.**

IT IS SO ORDERED.

Sincerely,

Charles W. Welch, III

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